IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9046 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESH NAGJIBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR UDAI R BHATT, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 05/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Baroda City on 1st July, 2000 in exercise of powers conferred upon him under Sec. 3(1) of the Gujarat Prevention of Anti Social

Activities Act, 1985 (PASA for short) and the petitioner came to be detained on 1st July, 2000.

2. Grounds reveals that in all four offences under the Bombay Prohibition Act Sections 66B, 65 (A), (B) and under Sections 307, 332 and 114 of the IPC came to be registered against the petitioner. The detaining Authority took into consideration the investigation of the above said crimes registered and in addition to this, the statements of three witnesses also considered by the detaining authority who on assurance of anonymity offered their statements to the extent that the petitioner was dealing in illegal liquor and was headstrong and hardened criminal. It is so stated in the statements also that the petitioner is obstruction to public order. From the above materials, the detaining authority came to the conclusion that the petitioner was a "bootlegger" within the meaning of Section 2(b) of the PASA Act. Therefore, the impugned order was passed against the petitioner.

3. Learned Advocate Ms. Krishna Mishra for the petitioner and learned Advocate Mr. Udai Bhatt for the respondents were heard.

4. Various grounds raised to challenge the detention order, inter alia, it has been vehemently urged that the order in question is vitiated by non-application of mind on the part of detaining authority. It is urged that in all the offences, the petitioner was on bail and resort to the provisions of Sec. 437(5) of the Cr.P.C. was not taken. Not only that the detaining authority has taken considerable time in passing of the orders.

5. Having regard to the rival contentions and scrutinising the record, it appears that lastly the petitioner was released on bail by the competent court for the offence registered against the petitioner at Makarpura Police Station being C.R. No. III-576/1999, on 21st November, 1999. The petitioner was released on bail earlier to this date for the offences registered against him as mentioned in the detention order. Thereafter, the record reveals that the statements of the witnesses were recorded by the concerned Police Officer in March 2000 and April 2000. They narrated the incident of February 2000 and March 2000. However, the order of detention was passed on 1st July, 2000. Firstly, the order is vitiated because the order is not passed forthwith and secondly the detaining authority has brushed aside the alternative less drastic remedy available to the detaining authority by mere saying that the procedure for the cancellation of bail was likely to

take time. Non-application of mind therefore is obvious firstly, causing delay in passing the order and then without resorting to the less drastic remedy, brushed aside the same by saying that the same was likely to take time. In this view of the matter, the order passed by the detaining authority is vitiated and is required to be quashed and set aside.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Baroda City on 1st July, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Dinesh Nagjibhai Parmar is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair